

an unprecedented, after-the-fact determination by the federal government that mineral development from these State lands is no longer viable.

*Clean Water Act Section 404(c) offers no protections beyond those included in the Clean Water Act Section 404(b)(1) permit process.* The regulations that implement the two parts of the Clean Water Act include virtually the same prohibitions, and call for virtually the same analyses and findings. Where Section 404(c) rules prohibit “unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas,” the Section 404(b)(1) rules prohibit “significantly adverse effects . . . on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites” as well as “recreational” and “aesthetic” “values.” The prohibitions and standards are very similar. The difference, of course, is that you are being asked to invoke Section 404(c) now ahead of any environmental planning and permitting processes, whereas the Section 404(b)(1) process would come later as part of the permit process for Pebble or another mine. The fact remains that Section 404(c) does not offer any more protection for area resources than does Section 404(b).

*The record is currently insufficient to support the findings demanded by the 404(c) process,* and could not begin to approach the record that will exist upon completion of the National Environmental Policy Act (NEPA) and permit processes that would be required for new mine development. As already mentioned, the 404(c) process hinges on the Environmental Protection Agency (EPA) deciding whether there will be “unacceptable adverse impacts” on “municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” The environmental planning and permitting process for the Pebble Mine alone will necessarily produce volumes of studies and information that would allow for fully informed decisions about potential impacts from mining in the area.

*Not enough is known about mine plans in the area to gauge impacts as required by the 404(c) process.* State and federal agencies have yet to receive designs or permit applications for the Pebble Project, or any other major mine in the Bristol Bay area. Without a specific proposal, EPA cannot evaluate the potential impacts or risks from the project. We do not know where facilities would be located, which wetlands might be impacted, or what the characteristics of the dredged or fill material would be.

*A meaningful 404(c) process cannot be concluded in the time frame envisioned by the regulations.* While the 404(c) process can be initiated before receipt of a permit application, the normal course would begin with a notice of a proposed determination by the Regional Administrator and conclude with a final determination by the Administrator approximately five months later. We recognize that time frames can be extended for good cause, but doubt that anyone envisioned extending the process over the multiple years it would take to collect information, complete the impact analyses, and develop a sound record on a par with what we could expect from the NEPA and permit processes for a new mine development proposal.

*The 404(c) process would short change public participation.* The public notice and opportunity for comment and hearing associated with the 404(c) process could not rival the outreach, education, consultation, and other public involvement that would occur should the Pebble Mine or another mine advance to the NEPA and permitting phase.